

Federal Acquisition Regulation

32.102

32.007 Contract financing payments.

(a)(1) Unless otherwise prescribed in agency policies and procedures or otherwise specified in paragraph (b) of this section, the due date for making contract financing payments by the designated payment office is the 30th day after the designated billing office receives a proper contract financing request.

(2) If an audit or other review of a specific financing request is required to ensure compliance with the terms and conditions of the contract, the designated payment office is not compelled to make payment by the specified due date.

(3) Agency heads may prescribe shorter periods for payment based on contract pricing or administrative considerations. For example, a shorter period may be justified by an agency if the nature and extent of contract financing arrangements are integrated with agency contract pricing policies.

(4) Agency heads must not prescribe a period shorter than 7 days or longer than 30 days.

(b) For advance payments, loans, or other arrangements that do not involve recurrent submission of contract financing requests, the designated payment office will make payment in accordance with the applicable contract financing terms or as directed by the contracting officer.

(c) A proper contract financing request must comply with the terms and conditions specified by the contract. The contractor must correct any defects in requests submitted in the manner specified in the contract or as directed by the contracting officer.

(d) The designated billing office and designated payment office must annotate each contract financing request with the date their respective offices received the request.

(e) The Government will not pay an interest penalty to the contractor as a result of delayed contract financing payments.

[66 FR 65355, Dec. 18, 2001]

32.008 Notification of overpayment.

If the contractor notifies the contracting officer of a duplicate payment or that the Government has otherwise

overpaid, the contracting officer shall follow the procedures at 32.604.

[73 FR 54002, Sept. 17, 2008]

Subpart 32.1—Non-Commercial Item Purchase Financing

32.100 Scope of subpart.

This subpart provides policies and procedures applicable to contract financing and payment for any purchases other than purchases of commercial items in accordance with part 12.

[60 FR 49710, Sept. 26, 1995]

32.101 Authority.

The basic authority for the contract financing described in this part is contained in section 305 of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 255), section 2307 of the Armed Services Procurement Act (10 U.S.C. 2307), and Title III of the Defense Production Act of 1950 (50 U.S.C. App. 2091), as amended.

[48 FR 42328, Sept. 19, 1983, as amended at 60 FR 49710, Sept. 26, 1995]

32.102 Description of contract financing methods.

(a) Advance payments are advances of money by the Government to a prime contractor before, in anticipation of, and for the purpose of complete performance under one or more contracts. They are expected to be liquidated from payments due to the contractor incident to performance of the contracts. Since they are not measured by performance, they differ from partial, progress, or other payments based on the performance or partial performance of a contract. Advance payments may be made to prime contractors for the purpose of making advances to subcontractors.

(b) Progress payments based on costs are made on the basis of costs incurred by the contractor as work progresses under the contract. This form of contract financing does not include—

(1) Payments based on the percentage or stage of completion accomplished;

(2) Payments for partial deliveries accepted by the Government;

(3) Partial payments for a contract termination proposal; or

(4) Performance-based payments.

(c) Loan guarantees are made by Federal Reserve banks, on behalf of designated guaranteeing agencies, to enable contractors to obtain financing from private sources under contracts for the acquisition of supplies or services for the national defense.

(d) Payments for accepted supplies and services that are only a part of the contract requirements (*i.e.*, partial deliveries) are authorized under 41 U.S.C. 255 and 10 U.S.C. 2307. In accordance with 5 CFR 1315.4(k), agencies must pay for partial delivery of supplies or partial performance of services unless specifically prohibited by the contract. Although payments for partial deliveries generally are treated as a method of payment and not as a method of contract financing, using partial delivery payments can assist contractors to participate in contracts without, or with minimal, contract financing. When appropriate, contract statements of work and pricing arrangements must permit acceptance and payment for discrete portions of the work, as soon as accepted (see 32.906(c)).

(e)(1) Progress payments based on a percentage or stage of completion are authorized by the statutes cited in 32.101.

(2) This type of progress payment may be used as a payment method under agency procedures. Agency procedures must ensure that payments are commensurate with work accomplished, which meets the quality standards established under the contract. Furthermore, progress payments may not exceed 80 percent of the eligible costs of work accomplished on undefinitized contract actions.

(f) Performance-based payments are contract financing payments made on the basis of—

(1) Performance measured by objective, quantifiable methods;

(2) Accomplishment of defined events; or

(3) Other quantifiable measures of results.

[48 FR 42328, Sept. 19, 1987, as amended at 52 FR 30077, Aug. 12, 1987; 60 FR 49711, Sept. 26, 1995; 62 FR 12706, Mar. 17, 1997; 66 FR 65355, Dec. 18, 2001]

32.103 Progress payments under construction contracts.

When satisfactory progress has not been achieved by a contractor during any period for which a progress payment is to be made, a percentage of the progress payment may be retained. Retainage should not be used as a substitute for good contract management, and the contracting officer should not withhold funds without cause. Determinations to retain and the specific amount to be withheld shall be made by the contracting officer on a case-by-case basis. Such decisions will be based on the contracting officer's assessment of past performance and the likelihood that such performance will continue. The amount of retainage withheld shall not exceed 10 percent of the approved estimated amount in accordance with the terms of the contract and may be adjusted as the contract approaches completion to recognize better than expected performance, the ability to rely on alternative safeguards, and other factors. Upon completion of all contract requirements, retained amounts shall be paid promptly.

[51 FR 19716, May 30, 1986, as amended at 60 FR 49711, Sept. 26, 1995]

32.104 Providing contract financing.

(a) Prudent contract financing can be a useful working tool in Government acquisition by expediting the performance of essential contracts. Contracting officers must consider the criteria in this part in determining whether to include contract financing in solicitations and contracts. Resolve reasonable doubts by including contract financing in the solicitation. The contracting officer must—

(1) Provide Government financing only to the extent actually needed for prompt and efficient performance, considering the availability of private financing and the probable impact on working capital of the predelivery expenditures and production lead-times associated with the contract, or groups of contracts or orders (*e.g.*, issued under indefinite-delivery contracts, basic ordering agreements, or their equivalent);

(2) Administer contract financing so as to aid, not impede, the acquisition;